

Supreme Court ventures into religious disputes

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In *Bruker v. Markowitz*, a decision released on December 14, 2007, the Supreme Court of Canada permitted a woman to sue her ex-husband for failing to perform a religious obligation. The Supreme Court voted seven to two in favour of ordering a Jewish husband to pay \$47,500 in damages to his ex-wife for withholding his consent to a religious divorce, known as a "get." The husband had contractually agreed to provide his consent to the *get* in 1980 but refused to honor this agreement until 15 years later.

The majority of the court decided that, although an agreement to consent to a *get* is a religious concept and a matter of one's own conscience, it can be enforced by a secular court where, as in this case, it is made part of a civil contract. The majority did not accept the husband's argument that compelling him to provide the *get* would unjustifiably violate his freedom of religion.

To the contrary, the court held that "any harm to the husband's religious freedom in requiring him to pay damages for unilaterally breaching his commitment is significantly outweighed by the harm caused by his unilateral decision not to honour it."

Although it is generally recognized that the result in this decision was fair in the circumstances, the analysis employed by the court raises a number of serious concerns, as articulated by the dissenting judges, about the court's interference in religious matters.

For example, although the majority was quick to point out that it was not conducting "a judicial review of doctrinal religious principles," it did exactly that. The majority condemned a Jewish man's refusal to provide a religious divorce as

"arbitrarily deny[ing] his wife access to a remedy she independently has under Canadian law," and as constituting "an unjustified and severe impairment of a [Jewish woman]'s ability to live her life in accordance with this country's values and her Jewish beliefs."

However, it is not the court's role to be arbiter of which religious principles or doctrines are "fair" or obligatory. As the dissenting judges observed, where religion is concerned, the state leaves it to individuals to make their own choices.

Religious practices should not be regulated or interfered with by the state unless they infringe on an individual's civil rights. In this case, as the dissent observed, the husband's refusal to grant a *get* did not affect his wife's *civil* rights, as she was free to remarry and have legitimate children under Canadian and Quebec law. Only her *religious* rights were at issue, and she was free to accept the religious consequences of her husband's refusal or to seek assistance and guidance from her religious authorities.

In the words of the dissent, "it is not up to the state to promote a religious norm"—that is a role that should be "left to religious authorities." This is the view that has traditionally been observed by courts in Canada.

Significant shift

However, this case represents a significant shift from that position; the Supreme Court of Canada, for the first time, now seems prepared to involve itself in assessing the merits and fairness of religious doctrines. This approach is all the more apparent in the Supreme Court's statement that its role under the *Canadian Charter of Rights and Freedoms* is to "ensure that members of the Canadian public are not arbitrarily disadvantaged by their religion."

It remains to be seen how this decision will be interpreted in the future. It may be limited in application to its own facts. On the other hand, it may be interpreted more broadly to justify further interference by the courts in religious practices.

One of the dissenting judges' areas of concern was the potential for courts to inappropriately apply their secular power to penalize a "refusal to raise children in a particular faith, refusal to wear the veil, failure to observe religious holidays,

etc." It would seem that the majority's reasons would certainly grant lower courts the flexibility to employ this approach, a development which should be of concern to people and communities of faith in Canada.

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The Word Guild goes solo

MARKHAM, ON—Canada's largest Christian association of writers and editors is stepping out on its own.

In January The Word Guild announced its graduation from its position as a start-up project under Imago to its amalgamation with the charity Christian Info Canada (CIC).

"It has been an honour for Imago to partner with this energetic group of writers and watch it grow in its vision over the past six years," says John Franklin, the executive director of Imago. "Now that it is launching into a new time of independence, we hope that The Word Guild will continue to broaden its influence and serve as a model for excellence in writing, both within and well beyond the Christian community."

The Word Guild, which encourages excellence in the art, craft, practice and ministry of writing, and stresses teamwork among Canadian writers, editors and publishers with a Christian worldview, has grown to more than 325 members coast-to-coast, including more than 100 professional-level members.

Since 2002 The Word Guild has operated as a project of Imago, a registered charity that encourages the development of Christians in the arts.

A new board of directors will oversee the work of The Word Guild and other CIC initiatives.

(The Word Guild)

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